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ATTORNEY FOR APPELLANT:

SARAH L. NAGY
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

SAMUEL E. SALLEE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 40A01-0512-CR-541
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0409-FC-176

February 19, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Samuel E. Sallee (“Sallee”) pled guilty in Jennings Circuit Court to Class C felony intimidation and was sentenced to eight years with one year suspended. He appeals his sentence, arguing that his sentence was enhanced in violation of Blakely v. Washington, 542 U.S. 296 (2004). We affirm.

Facts and Procedural History

On September 16, 2004, the State charged Sallee with Class C felony intimidation with a weapon, Class C felony intimidation of law enforcement, Class D felony criminal recklessness, Class D felony pointing a firearm, Class D felony resisting law enforcement, and Class A misdemeanor battery. On April 11, 2005, Sallee entered into a written plea agreement whereby he agreed to plead guilty to Class C felony intimidation. In exchange, the State agreed to dismiss the remaining charges.

At the conclusion of a sentencing hearing on November 2, 2005, the court found as aggravating circumstances Sallee’s six prior felony convictions, seven prior misdemeanor convictions, a prior probation violation, his lack of a high school diploma or GED, the fact that Sallee discharged a rifle inside a residence, and the fact that he pointed a rifle at a uniformed police officer. Tr. p. 43. The court also found the following mitigating circumstances: Sallee’s guilty plea, his “disastrous” childhood, his past cooperation with law enforcement, his employment, and the hardship his incarceration would place on his two sons. Id. Finding that Sallee’s “prior criminal record makes it very apparent that the aggravating factors far outweigh the mitigating factors[,]” the court sentenced Sallee to eight years with one year suspended. Id. Sallee now appeals.

Discussion and Decision

Sallee argues his sentence is “unconstitutional because it exceeds the presumptive sentence established by the Legislature, and was based upon aggravating factors not found by a jury.” Br. of Appellant at 2.

Our supreme court has explained as follows:

Under Blakely, a trial court in a determinate sentencing system such as Indiana’s may enhance a sentence based only on those facts that are established in one of several ways: 1) as a fact of prior conviction; 2) by a jury beyond a reasonable doubt; 3) when admitted by a defendant; and 4) in the course of a guilty plea where the defendant has waived Apprendi rights and stipulated to certain facts or consented to judicial factfinding.

Trusley v. State, 829 N.E.2d 923, 925 (Ind. 2005) (citations omitted).

Sallee pled guilty under the terms of a written plea agreement which left sentencing to the trial court’s discretion. Appellant’s App. p. 37. The plea agreement specifically provided, “You have been informed that by pleading guilty, you have voluntarily waived the right to have a jury determine the aggravating or mitigating circumstances that can enhance or reduce your sentence above or below the presumptive sentence.” Id. Thus, Sallee expressly waived his rights under Blakely. See Williams v. State, 836 N.E.2d 441, 444 (Ind. Ct. App. 2005).

The trial court did not err in imposing an enhanced sentence.

Affirmed.

KIRSCH, C. J., and SHARPBACK, J., concur.